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AUG 15 2019 COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT FRANKLIN CIRCUIT COURT
AMY FELDMAN, CLERK DIVISION I
CASE NO. 19-CI-8044

FILED *gf*

AUG 15 2019
FRANKLIN CIRCUIT COURT
AMY FELDMAN, CLERK

JENEAN M. HAMPTON, in her official capacity as
the Lieutenant Governor of the Commonwealth of Kentucky

PLAINTIFF

v.
MOTION FOR EXPEDITED RELIEF
and
FOR IMMEDIATE TEMPORARY INJUNCTION
and
INCORPORATED MEMORANDUM OF LAW

MATTHEW G. BEVIN, in his official capacity as
Governor of the Commonwealth of Kentucky,

and

PERSONNEL CABINET

DEFENDANTS

Comes now Jenean M. Hampton, the Lieutenant Governor of the Commonwealth of Kentucky (“Hampton”), by and through the undersigned counsel, and moves this Court:

1. to expedite relief sought in this action pursuant to CR 57 scheduling this matter for prompt hearing before the Court; and

2. for an immediate temporary injunction pursuant to CR 65.04, as requested in her

Verified Complaint, and more particularly ordering as follows:

- a. Ordering the Personnel Cabinet to process the appointment of such officers and employees as the Lieutenant Governor has appointed, and may appoint in the future, to her staff, forthwith; and

b. Enjoining the Governor, or any person acting under his authority, from limiting, obstructing, attempting to terminate, or in any way interfering with the Lieutenant Governor's appointment of officers and employees to her staff.

In support of her Motions, pursuant to CR 65.04(1), Hampton expressly incorporates by reference the factual averments set forth in her Verified Complaint filed herein; in further support of her Motions, Hampton submits the following Incorporated Memorandum Law:

INCORPORATED MEMORANDUM OF LAW

I. The Court should expedite this matter and advance it on the calendar.

Civil Rule (CR) 57 provides that “[t]he court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.” Because the instant Action raises serious and important questions as to the rights of the Plaintiff to exercise certain rights, authority, and privileges attendant to her office, time is of the essence. There is no monetary value, no price, which can be placed upon each day of the Lieutenant Governor’s term. Yet this much is certain: as of the filing of this Action, the Lieutenant Governor has 117 days remaining in her term of office. Every day that passes while she is wrongfully deprived of the rights, authority, and privileges which are attendant to her office is one more day for which there is no remedy at law.

For these reasons, the Court should expedite this matter and order a speedy hearing on the permanent relief sought by Hampton, pursuant to CR 57.

II. The Court should grant an immediate temporary injunction.

The Court should also grant an immediate temporary injunction. As alleged in this Verified Complaint, the facts giving rise to this Action arise out of the putative termination of two of the Lieutenant Governor's staff; namely, Stephen L. Knipper ("Knipper") and Adrienne Southworth ("Southworth"). The putative terminations were executed by persons in Governor Bevin's office; Hampton neither authorized nor consented to the termination of her staff.

a. KRS 11.040 does not pertain to the appointment of staff to the Lieutenant Governor's Office.

In the Appeals of Knipper and Southworth which are currently before the Personnel Board,¹ counsel for Governor Bevin's Office has repeatedly argued that both Knipper and Southworth were appointed by Bevin under KRS 11.040, and that, as a result, they served at the pleasure of the Governor. This narrative is fictional; it was the Lieutenant Governor who interviewed, selected, and appointed both Knipper and Southworth.

As a threshold matter, it should be observed that while the factual bases for the Appeals before the Personnel Board largely overlap with the factual bases for this Action, Hampton has brought this Action before the Franklin Circuit Court in order to establish and enforce her constitutional and statutory rights as the Lieutenant Governor. This Action is not an appeal of the Personnel Board's actions in the cases which remain before it, as there have been no final orders therein. Nor can it be said that Hampton has failed to exhaust any administrative remedies available to her office. Hampton has been directly aggrieved by the actions of the Defendants which have unlawfully deprived her of rights attendant to her office. There is no administrative relief available to Hampton under KRS Chapter 18A. Even if there were, due to the pressing

¹ See Complaint, ¶ 30; those Appeals are Nos. 2019-037 and 2019-131.

nature of this matter, injunctive relief is proper in this matter, and injunctive relief may not be granted by the Personnel Board.

In proceedings before the Personnel Board, counsel for the Governor's Office has relied heavily upon two Executive Orders in support of its argument that Knipper and Southworth were appointed by Bevin.² Those Executive Orders do in fact purport to appoint Knipper and Southworth pursuant to KRS 11.040.

But the claim that Knipper and Southworth were appointed under KRS 11.040 to the Lieutenant Governor's Office is simply false. The Governor simply does not have authority to appoint personnel to the Lieutenant Governor's office. KRS 11.040, the statute cited by the Executive Orders, provides in relevant part that "The Governor may appoint such persons as he deems necessary for the proper operation of his office[.]"³ The claim that appointments to the Lieutenant Governor's office arise under KRS 11.040 only makes sense if one concludes that the Governor's Office includes the Lieutenant Governor's Office. This is a novel and unsustainable proposition, unsupported by either the Kentucky Constitution or the Kentucky Revised Statutes.

As a matter of fact, the language of Kentucky Constitution § 70 is wholly inconsistent with the Governor's Office's interpretation of KRS 11.040 that the Lieutenant Governor's Office is merely a part of the Governor's Office. In providing how the offices of governor and lieutenant governor are filled, that Section states in relevant part:

They shall be elected jointly by the casting by each voter of a single vote applicable to both offices, as shall be provided by law.
(Emphasis added.)

Other sections of the Kentucky Constitution make it clear that the offices of governor and lieutenant governor are separate offices. For example, Ky Const. § 85 contains provisions

² Executive Orders 2015-016 and 2015-036 are attached hereto as Exhibits 1 and 2, respectively.

³ KRS 11.040(1) (emphasis added).

pertaining to the removal of the lieutenant government from office during a vacancy in the office of governor.⁴ That Section clearly differentiates between the offices of governor and lieutenant governor. Similarly, Ky. Const. § 73 references “the duties of their offices [plural].” Section 74 says that both the governor and lieutenant governor shall receive compensation “for the performance of the duties of their respective offices [plural]...” And Section 95, titled “Time of election of elected Constitutional State officers,” specifically names the lieutenant governor among a list of eight such officers. Kentucky’s Constitution makes it abundantly clear that the Governor’s Office is not the Lieutenant Governor’s Office.

In interpreting the meaning of KRS 11.040, the intention of the legislature must be derived, if at all possible, from the language that the General Assembly chose.⁵ In interpreting a statute, courts must rely “generally on the common meaning of the particular words chosen.”⁶ When interpreting a statute, “if a plain reading of the statute yields a reasonable legislative intent, then that reading is decisive and must be given effect.”⁷ The “emphasis on the actual meaning of statutory language, at risk of seeming pedantic, is critical because each word used by the General Assembly represents an affirmative choice to convey a specific message.”⁸ Interpreting the relevant language of KRS 11.040 is not particularly difficult here: the Governor’s authority to appoint personnel extends to “his office.” The statute cannot be contorted to mean “his office and the Lieutenant Governor’s Office.”

⁴ The relevant portion is the second sentence of Ky. Const. § 85, which provides as follows: “And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached and removed from office, refuse to qualify, resign, or die, the President of the Senate shall in like manner administer the government.”

⁵ *Shawnee Telecom Resources, Inc. v. Brown*, 354 S.W.3d 542, 551 (Ky. 2011); *see also Jefferson Cty. Bd. of Educ. v. Fell*, 391 S.W.3d 713, 718 (Ky. 2012).

⁶ *Fell*, 391 S.W.3d at 718 (*citing Caesar’s Riverboat Casino, LLC v. Beach*, 336 S.W.3d 51, 58 (Ky. 2011)); *see also* KRS 446.080(4), (which requires that “All words and phrases shall be construed according to the common and approved usage of language...”).

⁷ *King Drugs, Inc. v. Commonwealth*, 250 S.W.3d 643, 645 (Ky. 2008).

⁸ *City of Lebanon v. Goodin*, 436 S.W.3d 505, 513 (Ky. 2014).

In Knipper's Appeal before the Personnel Board,⁹ counsel for the Governor's Office has also argued that if the Governor did not appoint Knipper, then his appointment was void *ab initio*. The Governor's Office is partly right: any attempt by Bevin to appoint staff to the Lieutenant Governor's Office is invalid, and void *ab initio*. He does not have that authority. But the Lieutenant Governor appointed her staff, not Bevin. The fact that Bevin also claimed to have appointed them via Executive Orders 2015-016 and 2015-036 is of no consequence whatsoever.

b. KRS Chapter 12 provides explicit appointment authority to the Lieutenant Governor.

In proceedings before the Personnel Board, counsel for the Governor's Office has insisted that KRS 12.020 "has no application in this matter." As a matter of fact, KRS 12.020 is quite relevant. That statute provides that:

Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are included...

This attachment comes with the following limitation:

...the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.
(emphasis added.)

Thus, generally, it is clear that the department to which any authority, office, etc. is attached does not have authority over personnel. But there is an exception: "where the attached department or administrative body is headed by a constitutionally elected officer," that limitation does not apply. This necessarily leads to the conclusion that—unlike most departments of government,

⁹ Because there has been less time pass since Southworth's putative termination, her Appeal before the Board is less advanced; however, counsel for the Governor's Office has suggested to the Personnel Board that "the same material facts and controlling law govern the resolution" of Southworth's case. That much is right—but the law requires a resolutely diametrically opposed to that sought by the Governor's Office.

those “headed by a constitutionally elected officer” do have authority over personnel. The Court should consider the reasoning set forth in the unpublished opinion in *Commonwealth v. Veitch*, notwithstanding the fact that it is unpublished.¹⁰

Nevertheless, one need not rely too heavily upon KRS 12.020. There are other provisions within KRS Chapter 12 which demonstrate that the Lieutenant Governor’s Office is a discreet department with authority to appoint its own personnel. As already established, the Lieutenant Governor’s Office is expressly delineated in KRS 12.020 as a “department headed by [an] elected officer[].”¹¹ KRS 12.040(1) goes on to provide that “The heads of departments shall have direction and control of their respective departments, and through their departments shall exercise the powers and perform the duties vested in the departments under their direction and control.” (Emphasis added.) And KRS 12.040(4) provides that “The heads of all departments shall exercise supervision over the personnel...of their respective departments.” (Emphasis added.)

There is yet more authority demonstrating that the Lieutenant Governor has appointing authority. KRS 12.060(1) provides as follows:

(1) The heads of statutory departments, with the approval of the secretary of personnel, may establish such subordinate positions as may be necessary and make appointments thereto, within the limitations of their appropriations, and removals therefrom. All appointees to such positions shall be under the supervision, direction, and control of the heads of the respective departments and shall perform such duties as the heads of the departments prescribe. The appointment of all employees not otherwise provided for shall be made by the heads of the departments. (Emphasis added.)

¹⁰ 2014-CA-001973-MR, NO. 2015-CA-000008-MR, 2016 Ky. App. Unpub. LEXIS 881. A copy of said opinion is attached hereto as Exhibit 3.

¹¹ KRS 12.020(I).

There are two important conclusions demanded by this provision. First, while heads of statutory departments may only establish subordinate positions “with the approval of the secretary of personnel,” this does not apply to Constitutional Departments. Moreover, the last sentence of that statute resolves the question of appointment authority and makes it crystal clear: “The appointment of all employees not otherwise provided for shall be made by the heads of the departments.” This provision requires no construction; it requires only a cursory reading, and its meaning is plain and straightforward.

c. Opinion of the Attorney General 19-012 supports Hampton’s position.

In further support of her legal position, Hampton submits OAG 19-012, which was issued on August 8, 2019, in answer to the Lieutenant Governor’s inquiry as to “Whether the Lieutenant Governor has the appointing authority to hire and fire his/her own staff.” That Opinion is attached hereto as Exhibit 4. According the Opinion, the answer is an unequivocal “yes.”

OAG 19-012 is well-reasoned and leaves no room for interpretation: “the Lieutenant Governor is the appointing authority of the office of the Lieutenant Governor and, as such, has the power to appoint and terminate employees of the office of the Lieutenant Governor[.]”¹² “[T]hey serve at the will of the Lieutenant Governor.”¹³

As the Court is well aware, “[t]he Attorney General is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies[.]”¹⁴ “[G]overnment officials are expected to abide by the opinion [of the Attorney

¹² OAG 19-012 [Exhibit 4], p. 2.

¹³ *Id.* at p. 3.

¹⁴ KRS 15.020.

General] until a court decrees otherwise or the legislature changes the law.”¹⁵ Opinions of the Attorney General are “highly persuasive,” and Kentucky’s courts “give great weight to the reasoning and opinion expressed” therein.¹⁶

The legal analysis in OAG 19-012 is sound, and the Lieutenant Governor has the statutory authority pursuant to KRS Chapter 12, including, without limitation, §§ 12.020, .040, and .060, to appoint officers and employees to her staff.

d. A Temporary Injunction is necessary; time is of the essence.

CR 65.04(1) provides that “a temporary injunction may be granted during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant’s rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.” “In the area of temporary injunctive relief, the clearest example of irreparable injury is where it appears that the final judgment would be rendered completely meaningless should the probable harm alleged occur prior to trial.”¹⁷ “[T]he sufficiency of a verified complaint to support a temporary injunction should be evaluated by a balance-of-the-hardships test[, which] provides that if the complaint shows a probability of irreparable injury and the equities are in favor of issuance, it is sufficient if the complaint raises a serious question warranting a trial on the merits.”¹⁸

The Court may issue a temporary injunction where it determines:

- (1) that the movant’s position presents “a substantial question” on the underlying merits of the case, i.e. that there is a substantial

¹⁵ *York v. Commonwealth*, 815 S.W.2d 415, 417 (Ky. App. 1991) (citing OAG 84-136).

¹⁶ *See id.*

¹⁷ *Maupin v. Stansbury*, 575 S.W.2d 695, 698 (Ky. App. 1978) (citations omitted; emphasis added).

¹⁸ *Id.* at 699.

possibility that the movant will ultimately prevail, (2) that the movant's remedy will be irreparably impaired absent the extraordinary relief, and (3) that an injunction will not be inequitable, i.e. will not unduly harm other parties or disserve the public.¹⁹

In this particular case, the essential underlying facts will be largely—and perhaps entirely—undisputed. The essential questions before the Court are questions of law, which may be summarized as follows:

1. Whether the Lieutenant Governor is the appointing authority for officers and employees for her office;
2. Whether the Governor has any appointing authority (and the concomitant removal authority) over the officers and employees of the Lieutenant Governor; and
3. Whether the Personnel Cabinet—or any other person—may lawfully obstruct the Lieutenant Governor's appointment of officers and employees to her staff.

In her Verified Complaint, and by this Memorandum, Hampton has made the showing necessary to grant temporary injunctive relief. Indeed, the content of OAG 19-012 alone satisfies the requirement that Hampton demonstrate a substantial possibility that she will ultimately prevail. Surely there can be little doubt that the continued deprivation of the Lieutenant Governor's statutory and rightful authority to appoint personnel to her office constitutes an immediate and irreparable injury for which no remedy at law will suffice.

Every single day that passes while the Lieutenant Governor is wrongfully deprived of the authority to appoint her staff constitutes an additional “injury, loss, or damage.”²⁰ No final judgment rendered at some point in the future will remedy the obvious and plain “injury, loss, or damage” which will be suffered today. Or tomorrow. Or the next day. Immediate temporary

¹⁹ *Pollitt v. PSC of Ky.*, 552 S.W.3d 70, 73 (Ky. 2018) (quoting *Price v. Paintsville Tourism Com'n*, 261 S.W.3d 482, 484 (Ky. 2008)).

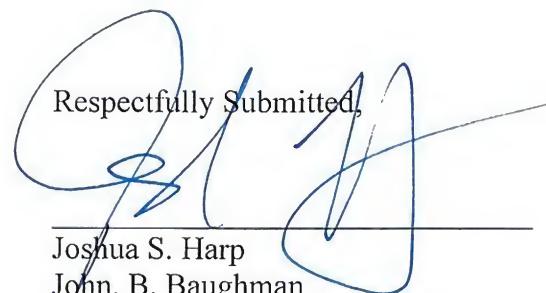
²⁰ CR 65.04(1).

injunctive relief is the only mechanism to preserve what remains of the Lieutenant Governor's appointing authority expressly granted under KRS Chapter 12. The Personnel Cabinet must be directed to accept, recognize, and process Hampton's appointees promptly, and Bevin (and those acting under his authority) must be enjoined from interfering with Hampton's appointing authority.

Temporary injunctive relief should be granted by this Court, and it should be granted immediately.

WHEREFORE, the Movant, Jenean M. Hampton, in her capacity as the Lieutenant Governor of the Commonwealth of Kentucky, respectfully moves this Court to immediately enter a Temporary Injunction which binds the Defendants, as follows:

1. Ordering the Personnel Cabinet to process the appointment of such officers and employees as the Lieutenant Governor has appointed, and may appoint in the future, to her staff, forthwith; and
2. Enjoining the Governor, or any person acting under his authority, from limiting, attempting to terminate, or in any way interfering with the Lieutenant Governor's appointment of officers and employees to her staff.

Respectfully Submitted,


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*Counsel for Jenean M. Hampton,
Lieutenant Governor*

CERTIFICATE OF SERVICE

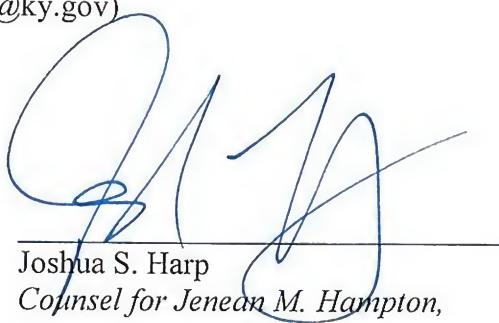
This is to certify that a true and correct copy of the foregoing was served upon the following persons as indicated below, all on this the 15th day of August, 2019:

Hon. Andy Beshear
Office of the Attorney General
The Capitol Building
700 Capital Avenue
Suite 118
Frankfort, KY 40601
Via U.S. Mail and facsimile transmission (502-564-2894)

Governor Matthew G. Bevin
Office of the Governor
The Capitol Building
700 Capital Avenue
Suite 100
Frankfort, KY 40601
Via U.S. Mail and facsimile transmission (502-564-2517)

Hon. Carmine Iaccarino
Public Protection Cabinet
Office of Legal Services
656 Chamberlin Avenue
Suite B
Frankfort, KY 40601
Via U.S. Mail and email transmission (Carmine.Iaccarino@ky.gov)

Personnel Cabinet
501 High Street
Frankfort, KY 40601



Joshua S. Harp
*Counsel for Jenean M. Hampton,
Lieutenant Governor*



MATTHEW G. BEVIN
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2015-016
December 8, 2015

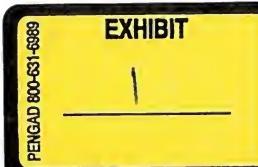
By virtue of the authority vested in me by Section 69 of the Kentucky Constitution and Section 11.040 of the Kentucky Revised Statutes, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, do hereby appoint **Stephen Knipper**, Independence, Kentucky, as Chief of Staff for Lieutenant Governor Jenean Hampton.

Please issue a Commission to him.



MATTHEW G. BEVIN
Governor

Alison Lundergan Grimes
ALISON LUNDERGAN GRIMES
Secretary of State



ATE December 8, 2015

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
May Sue Johnson

GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

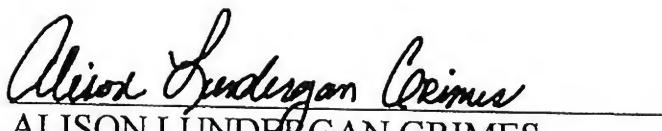
2015-036
December 18, 2015

By virtue of the authority vested in me by Section 69 of the Kentucky Constitution and Section 11.040 of the Kentucky Revised Statutes, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, do hereby appoint **Adrienne Southworth**, Lawrenceburg, Kentucky, as Chief of Staff for the Lt. Governor Jenean Hampton.

Please issue a Commission to her.



MATTHEW G. BEVIN
Governor



ALISON LUNDERGAN GRIMES
Secretary of State



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DATE 12/18/15

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY *[Signature]*



Warning
As of: August 14, 2019 7:39 PM Z

Commonwealth v. Veitch

Court of Appeals of Kentucky

July 15, 2016, Rendered

NOS. 2014-CA-001973-MR, NO. 2015-CA-000008-MR

Reporter

2016 Ky. App. Unpub. LEXIS 881 *

COMMONWEALTH OF KENTUCKY, PUBLIC PROTECTION CABINET; DAVID A. DICKERSON, SECRETARY, PUBLIC PROTECTION CABINET; KENTUCKY HORSE RACING COMMISSION; AND MARC GUILFOIL, EXECUTIVE DIRECTOR, KENTUCKY HORSE RACING COMMISSION, APPELLANTS v. JOHN VEITCH; AND COMMONWEALTH OF KENTUCKY PERSONNEL BOARD, APPELLEES AND JOHN VEITCH, CROSS-APPELLANT v. COMMONWEALTH OF KENTUCKY, PUBLIC PROTECTION CABINET; DAVID A. DICKERSON, SECRETARY, PUBLIC PROTECTION CABINET; KENTUCKY HORSE RACING COMMISSION; MARC GUILFOIL, EXECUTIVE DIRECTOR, KENTUCKY HORSE RACING COMMISSION; AND COMMONWEALTH OF KENTUCKY PERSONNEL BOARD, CROSS-APPELLEES

Notice: THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(c). THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

Subsequent History: [*1] Discretionary Review Granted by the Supreme Court of Kentucky, February 9, 2017. Opinion of the Court of Appeals Ordered not to be

Published.

Review denied and ordered not published by Veitch v. Pub. Prot. Cabinet, 2017 Ky. LEXIS 34 (Ky., Feb. 9, 2017)

Prior History: APPEAL FROM FRANKLIN CIRCUIT COURT. HONORABLE THOMAS D. WINGATE, JUDGE. ACTION NO. 13-CI-00895.

CROSS-APPEAL FROM FRANKLIN CIRCUIT COURT. HONORABLE THOMAS D. WINGATE, JUDGE. ACTION NO. 13-CI-00895.

Commonwealth v. Veitch, 2016 Ky. App. LEXIS 122 (Ky. Ct. App., July 15, 2016)

Core Terms

Cabinet, Personnel, non-merit, Steward, appointment, terminate, executive director, appointing authority, hired, elected official, unclassified, statutes, administrative body, Officer's, departments, headed, statutory authority, recommended order, horse racing, functions, classified service, final order, regulations, decisions, agency's, benefits, argues, issues, horse

Counsel: BRIEF FOR APPELLANTS/CROSS-APPELLEES: Barry L. Dunn, Carmine G. Iaccarino, Frankfort, Kentucky; Susan B. Speckert, Lexington, Kentucky.

BRIEF FOR APPELLEE/CROSS-APPELLEE COMMONWEALTH OF KENTUCKY PERSONNEL BOARD: Boyce Andrew Crocker, Frankfort, Kentucky.

BRIEF FOR APPELLEE/CROSS-APPELLANT JOHN VEITCH: Thomas W. Miller, Elizabeth C. Woodford, Lexington, Kentucky.

Judges: BEFORE: CLAYTON, COMBS, AND MAZE, JUDGES. ALL CONCUR.

Opinion by: CLAYTON



Opinion

AFFIRMING IN PART AND REVERSING AND REMANDING

CLAYTON, JUDGE: This case presents two main issues: (1) was John Veitch, who served as the Kentucky Horse Racing Commission's (hereinafter "KHRC") Chief State Steward, a merit employee?; and, (2) given that the KHRC is an agency in the Public Protection Cabinet, does the Cabinet Secretary have the authority to terminate the KHRC's Chief State Steward if he or she was a non-merit employee? The [*2] Franklin Circuit Court answered both issues in the negative. Veitch and the Public Protection Cabinet both appeal. Following a detailed factual recitation, we affirm in part and reverse and remand.

FACTS

On July 8, 2005, the then-Secretary of the Environmental and Public Protection Cabinet, LaJuana S. Wilcher, submitted a formal request to then-Governor Ernie Fletcher for approval to appoint Veitch to the position of "Chief State Stewart."¹ Then-Governor Fletcher signed the request, as did Erwin Roberts, who was the Personnel Cabinet Secretary. Veitch received a Form No. P-1 from the Personnel Cabinet, which labeled his pay grade as "00," his class code as "0191," and his salary as \$7,070.04 per month. The appointing authority listed on the form was Wilcher.

When Veitch was hired as Chief State Steward, a classified (a.k.a. "merit") job code existed for the same job title.² Its title code was "3845," and its pay grade was a "17," with a monthly salary range between \$3,688.28 and \$4,886.38. That job was administratively abolished in March of 2006. Veitch never held the classified job, nor did he receive the substantially lower classified salary.

Veitch was Chief State Steward from July 16, [*3] 2005, until he was terminated by letter on November 28,

¹The formal request used the term "Stewart." All other documents, including the parties' briefs, use the term "Steward." We will likewise use the term "Steward."

²For purposes of this opinion, the terms "merit" and "classified" are used interchangeably, as are the terms "non-merit" and "unclassified."

2011.³ The letter was signed by Holly McCoy-Johnson. McCoy-Johnson was the Executive Director for the General Administrative and Programmatic Shared Services for the Public Protection Cabinet. She had previously received a Personnel Cabinet Authorization Signature Form giving her the authority to sign notices of dismissal for the Public Protection Cabinet. The Secretary of the Public Protection Cabinet, Robert D. Vance, also had the authority to sign notices of dismissal for the Public Protection Cabinet. Robert M. Beck, Jr., the KHRC's Chairman, and Marc Guilfoil, the KHRC's Acting Executive Director, concurred with Secretary Vance's decision to terminate Veitch from his job as Chief State Steward.

Veitch appealed his employment termination to the Kentucky Personnel Board. Following an evidentiary hearing, the hearing officer issued findings of fact, conclusions of law, and a recommended order. Concerning the issues now before us, the hearing officer concluded that Veitch was a non-merit employee, and Secretary Vance did not have the authority to fire Veitch. Both Veitch and the Public Protection Cabinet filed exceptions to the [*4] hearing officer's recommended order. The Personnel Board then filed a Final Order altering the recommended order inasmuch as the Board found Secretary Vance did have the authority to fire Veitch.

Veitch then petitioned the Franklin Circuit Court for review of the Personnel Board's Final Order. The Franklin Circuit Court agreed with the Hearing Officer and the Personnel Board that Veitch was a non-merit employee. It disagreed with the Personnel Board that

³During Veitch's final year of service, the KHRC brought an administrative action against Veitch to suspend him for violating five administrative regulations. The allegations stemmed from Veitch's handling of the 2010 Breeder's Cup World Championships at Churchill Downs. Specifically, during the Ladies' Classic, the final and biggest race of the day with a \$2,000,000 purse, the second betting favorite, Life at Ten, had some irregularities with her performance just minutes before the race. Life at Ten finished at a distant last in the race. Veitch did not have the horse examined or sampled following her performance. His failure to comply with the proper administrative regulations outlining his duties as Chief State Steward led to multiple findings of violations. On appeal, a panel of this Court affirmed in part and reversed and remanded for further proceedings finding evidence supported the KHRC's post-race findings, but not the pre-race findings. *Veitch v. Ky. Horse Racing Comm'n*, No. 2012-CA-001610-MR, 2013 Ky. App. Unpub. LEXIS 852, 2013 WL 5765130 (Ky. App. 2013).

the Public Protection Cabinet had the authority to terminate Veitch's employment. It thus reversed and remanded for Veitch to be reinstated, with back wages, to his position as Chief State Steward. The Public Protection Cabinet timely appealed. Having been fully briefed by all parties, including the Kentucky Personnel Board, the case is now ripe for a decision.

STANDARD OF REVIEW

Appellate review of an administrative agency's decision is for arbitrariness. *Kentucky Bd. of Nursing v. Ward*, 890 S.W.2d 641, 642 (Ky. App. 1994) (citing *Commonwealth, Transportation Cabinet v. Cornell*, 796 S.W.2d 591, 594 (Ky. App. 1990)). Arbitrariness is defined as clear error, and clear error examines whether the decision is supported by substantial evidence. *Ward*, 890 S.W.2d at 642 (citing *Crouch v. Police Merit Board*, 773 S.W.2d 461, 464 (Ky. 1988)). Three primary factors should be utilized to determine arbitrariness:

The court should first determine whether the agency acted within the [*5] constraints of its statutory powers or whether it exceeded them. Second, the court should examine the agency's procedures to see if a party to be affected by an administrative order was afforded his procedural due process. The individual must have been given an opportunity to be heard. Finally, the reviewing court must determine whether the agency's action is supported by substantial evidence. If any one of these three tests are failed, the reviewing court may find that the agency's action was arbitrary.

Commonwealth Transp. Cabinet Dep't of Vehicle Regulation v. Cornell, 796 S.W.2d 591, 594 (Ky. App. 1990) (citations omitted).

Under this standard, we now turn to the two issues raised by the parties.

ANALYSIS

Two issues are presented for our review: (1) was Veitch a merit employee; and, (2) did the Cabinet Secretary have authority to terminate Veitch? We address each issue *in seriatim*.

I. Was Veitch a merit employee?

If you treat an employee as a non-merit employee but

say that under a statute he or she should have been a merit employee, is the person a merit employee? No. Veitch wants the best of both worlds — the salary and benefits of a non-merit employee with the protections of a merit employee. He cannot have both, as all adjudicative bodies to review Veitch's claim have properly found. [*6] Just as "[a] horse is a horse is a horse," a non-merit employee is a non-merit employee is a non-merit employee. *Pacheco v. Safeco Ins. Co. of America*, 116 Idaho 794, 780 P.2d 116, 127 (Idaho 1989) (Bistline, J., dissenting). The Franklin Circuit Court's order is illustrative:

The Board amended the Hearing Officer's Recommended Order to conclude that "Veitch [. . .] was appointed Chief State Steward pursuant to [Kentucky Revised Statutes ("KRS")] 12.050. He was hired to this non-merit position [. . .] after a letter, in compliance with KRS 12.050, was signed by the Appointing Authority and approved by then Governor Fletcher." The Court agrees with the Board that the procedures used to fill the Chief State Steward in Veitch's case are the procedures used to hire a non-merit, unclassified employee.

The non-merit position of Chief State Steward was established June 16, 1999. Until March 16, 2006, a merit position of Chief State Steward also existed. The merit position was abolished, and there is no longer a corollary merit position of Chief State Steward. When Veitch was hired as Chief State Steward, then Governor Fletcher and the Appointing Authority signed a "12:050" letter, effective July 16, 2005, appointing him to that position. This process is never, and cannot be, utilized in the hiring of merit employees. The [*7] record reflects that Veitch's position was characterized and coded as a non-merit position at the time he was appointed and throughout his tenure as Chief State Steward. The Court sees no reason to disturb the Board's conclusion that Veitch's service as Chief State Steward was in the capacity of a non-merit, unclassified employee.

Opinion, p.4.

Veitch argues this analysis is faulty because the statutes do not list Chief State Steward as a non-merit job. Indeed, "[u]nder KRS 18A.115(1), all positions within state government are part of the classified service unless specifically excluded and are subject to personnel laws governing classified service." *Commonwealth Educ. & Humanities Cabinet Dep't of Educ. v. Gobert*, 979 S.W.2d 922, 926, 45 14 Ky. L. Summary 4 (Ky. App. 1998). And it is true that KRS

18A.115, which states classified services "shall comprise all positions in the state service now existing or hereafter established, except the following[.]" does not list Chief State Steward as an unclassified job.

However, if we were to accept Veitch's argument, Veitch's appointment to Chief State Steward was void *ab initio*. See *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W.2d 406, 411, 42 01 Ky. L. Summary 8 (Ky. App. 1994) (finding promotion that did not comply with 101 Kentucky Administrative Regulations (KAR) 1:400(1) "rendered null and void the property rights" of the employee in his or her current job). It is undisputed that Veitch was not hired pursuant to KRS 18A.010(1) ("All appointments and promotions [*8] to positions in the state classified service shall be made solely on the basis of merit and fitness, to be ascertained by competitive examination . . .") and KRS 18A.120(1) ("Except as hereinafter provided, all hiring for the classified service shall be on the basis of competitive examinations and certification by the cabinet in accordance with the provisions of KRS 18A.005 to 18A.200."). A register was not requested by the appointing authority, 101 KAR 2:066 Section 1, and neither was a certification of eligible applications transmitted to the appointing authority, *id.* at Section 2. Instead, Veitch was appointed as Chief State Steward pursuant to KRS 12.050. That statute provides:

Unless otherwise provided by law, deputy heads of departments, and directors of divisions and institutions shall be appointed by the heads of the departments and in statutory departments the appointment of deputy heads of departments, and heads of divisions shall be with the prior written approval of the Governor. In departments each division head shall report to the head of the department to which the division is assigned.

Having been appointed under this statute, Veitch was a non-merit employee. Veitch received a myriad of benefits by his non-merit status: the pay [*9] was not graded, his appointment was approved by the Governor, he did not have to compete with other applicants for the job, etc. And, more than that, Veitch was a KRS 12.050-appointed employee. He enjoyed additional benefits that non-appointed, unclassified employees did not. See, e.g., 780 KAR 6:080 Section 5(1) and (2) (other unclassified employees may be transferred to another unclassified service with written notice, but appointed and unclassified employees may not be transferred).

In spite of the benefits Veitch enjoyed, Veitch now asks us to violate the "Constitutional principle that you don't

look a gift horse in the mouth[.]" *Nix v. Smith*, 540 P.2d 516, 517 (Utah 1975), and allow Veitch to enjoy the benefits of both merit and non-merit status. We will not do so. Veitch was hired as a non-merit employee and will be treated as such. This issue is one for which all reviewing bodies have unanimously agreed. It is not an arbitrary decision.

Accordingly, we affirm the Franklin Circuit Court's order on this issue.

II. Did the Cabinet Secretary have authority to terminate Veitch?

Having determined Veitch was a non-merit employee, the question now focuses on whether the Cabinet Secretary had the authority to terminate Veitch. This issue divided the lower [*10] adjudicative bodies. The Hearing Officer and the Franklin Circuit Court found in Veitch's favor. The Personnel Board found against Veitch. Having reviewed the record and the relevant law, we find the Personnel Board's decision was not arbitrary, and it should control.

The final order of the Personnel Board added the following findings of fact to the Hearing Officer's recommended order:

23. The Chairman of the KHRC, Robert M. Beck, Jr., and the then Acting Executive Director of the KHRC, Marc Guilfoil, both concurred with Secretary Vance in the decision to terminate Veitch from his non-merit employment.
24. The Board finds that Robert Vance as Secretary of the Public Protection Cabinet is the Agency head for that Cabinet and for all the agencies attached to it, including the KHRC.

25. The Board finds that Secretary Robert Vance acted in terminating the employment of John Veitch under the expressed and implicit authority set forth in KRS 18A.005(1), and the expressed and implicit authority set forth at KRS 12.270(3) and (4). The Board finds that the enumeration of duties associated with that Executive Director of the KHRC set forth in KRS 230, *et seq.*, did not and does not confer sole and exclusive authority over personnel and programs [*11] in the KHRC to that Executive Director. The Board finds that a plain reading of the statutes listed *infra* clearly granted the authority to Secretary Robert Vance to terminate the employment of John Veitch as Chief State Steward.

(Final Order, p.2). It also added the following

conclusions of law to the Hearing Officer's recommended order:

5. The Board concludes as a matter of law that the Secretary of the Public Protection Cabinet, Robert Vance, had the authority conferred by KRS 18A.005(1) and KRS 12.270(3) and (4) to make the decision to instruct Holly McCoy-Johnson to draft a letter terminating employment of John Veitch as Chief State Steward.

6. The Board concludes as a matter of law that the authority possessed by the Secretary of the Public Protection Cabinet, as outlined in Conclusion of Law paragraph 5 above, does not conflict with the authority granted the Executive Director of the KHRC at KRS 230.230.

7. The Board rejects the Hearing Officer's conclusions that rely on interpretations of Executive Branch Ethics Commission opinions and statutes and regulations of other states in determining the boundaries and parameters of the Secretary's authority. The Board concludes that Kentucky Statutory law provides ample authority [*12] for the Public Protection Cabinet Secretary, as the Agency head, to exercise that authority conferred explicitly and implicitly in KRS Chapter 12 and KRS Chapter 18A to terminate a non-merit employee in an agency under his purview.

8. As a non-merit employee, the Appellant was legally dismissed without cause by Holly McCoy-Johnson at the direction of Secretary Robert Vance.

Id. at 2-3. We find no error with these findings or conclusions.

Two overarching themes guide our decision. First, Veitch was a political appointee and could be fired for any or no reason. "An unclassified employee is a political employee, not a merit employee, and may be discharged for any reason, including a bad reason, no reason or for political reasons so long as there is no statutory authority for a protest." *Martin v. Corrections Cabinet of Com.*, 822 S.W.2d 858, 860 (Ky. 1991).

Second, Veitch received his job because the then-head of the Public Protection Cabinet requested the Governor to appoint him Chief State Steward. His appointment-approval letter specifically delineated Veitch's appointment as follows:

As provided in KRS 12:050 [sic] this is to request your prior written approval of my proposed appointment of John M. Veitch to the position of Chief State Stewart [sic], Horse Racing Authority,

Department of Public Protection, [*13] in the Environmental and Public Protection Cabinet effective July 16, 2005.

This request was made by the then-Secretary of the Environmental and Public Protection Cabinet, and it was approved by then-Governor Ernie Fletcher and then-Personnel Cabinet Secretary Erwin Roberts. During a later reorganization, the Public Protection Cabinet became its own entity, and the Kentucky Horse Racing Authority was renamed the KHRC and placed inside the Public Protection Cabinet. KRS 12.020(II)(4)(f). Thus, under the now-existing structure, Veitch obtained his non-merit job because the Public Protection Cabinet Secretary made the request and the Governor approved it.

These two themes combine to leave one question outstanding: given that Veitch was hired because the Public Protection Cabinet's appointing authority filed a KRS 12.050 request from the Governor, and the Governor approved the request, who had the authority to terminate Veitch's appointment? Veitch argues that only the KHRC's Executive Director had the authority. The Public Protection Cabinet argues that its appointing authority, in addition to the KHRC, had the right to terminate Veitch's non-merit job. An examination of the statutes reveals that the Public Protection [*14] Cabinet's statutory interpretation is correct.

As established in the statutes, the KHRC is run by an Executive Director who is appointed by the Governor. KRS 230.225, which created the KHRC, made it to be an "independent agency of state government to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky." KRS 230.225(1). The statute specifically delineates that the KHRC is "attached to the Public Protection Cabinet for administrative purposes." *Id.* KRS 230.230 further establishes that the Governor is to appoint an executive director of the KHRC "who shall serve at the pleasure of the Governor." KRS 230.230(1). That executive director appoints all staff, KRS 230.230(1)(c), and "may employ, dismiss, or take other personnel action concerning an assistant executive director, stenographers, clerks, and other personnel as he or she may deem necessary to efficiently operate a racing commission's general office or any branch thereof." KRS 230.230(2). Likewise, KRS 230.240(1) gives the KHRC's executive director authority to "employ, dismiss, or take other personnel action and determine the reasonable compensation of stewards[.]"

Accordingly, all parties agree that the KHRC's executive director could have [*15] terminated Veitch's appointment. But just because the executive director has authority to terminate the Chief State Steward, is that authority exclusive, especially where the KHRC is an agency within the Public Protection Cabinet? Again, we turn to the statutes.

The Public Protection Cabinet's authority over the KHRC is derived first from KRS 12.020. That statute explains general agency relationships between cabinets and departments or programs:

Every authority . . . shall be included in or attached to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and *shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.*

(Emphasis added). This statute contains two independent clauses separated by a semicolon. The restrictions in the latter clause, the Public Protection Cabinet [*16] argues, apply only to the Personnel Board and departments headed by constitutionally elected officers. Veitch argues the restrictions apply to the Public Protection Cabinet. Reviewing the statute *in toto*, we agree with the Public Protection Cabinet.

KRS 12.020 establishes first and foremost the "Cabinet for General Government." KRS 12.020(I). This Cabinet includes such elected officers as the Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, and Commissioner of Agriculture. Undoubtedly, the Cabinet for General Government has no authority over the functions, personnel, funds, equipment, facilities, or records of any of these elected officers' offices. Those powers are precisely what the second clause of KRS 12.020 excises from the first clause. If we were to read this exclusionary clause as applying to administrative bodies other than constitutionally elected officials, then the Cabinet for General Government could make personnel and policy decisions for the Governor. This outcome is clearly not

the intent of this statute.⁴

Instead, the second clause exists to limit the first clause only when the administrative body is headed by a constitutionally elected officer, or when the administrative body is the Personnel Board. Thus, exclusions in the second clause do not apply to the Cabinets that fall under the first clause. If the KHRC is the Personnel Board or is headed by a constitutionally elected officer, only then do the exclusions apply.

Here, the KHRC is an administrative body that falls underneath the Public Protection Cabinet. The KHRC is neither the Personnel Board nor is it headed by a constitutionally elected officer. Thus, none of the KRS 12.020 [*18] exclusions applies to it. Instead, KRS 12.252 and KRS 230.225(1) specifically state the KHRC is "attached to the Public Protection Cabinet for administrative purposes[.]" Reading all three statutes *in pari materia* to harmonize and give each statute effect, *Light v. City of Louisville*, 248 S.W.3d 559, 563 (Ky. 2008), the Public Protection Cabinet may perform administrative functions for the KHRC. Administrative functions may include personnel decisions. Cf. *Cornett v. Chandler*, 307 S.W.2d 918, 920 (Ky. 1957) (finding the Governor may delegate his administrative duties, including terminating the employment of peace officers).

⁴A previous version of KRS 12.020 used different language that also comports with our interpretation of the current statute. The statute as it read in 1990 stated:

Every authority, board, bureau, interstate compact, commission, committee, conference, council, office or any other form of organization shall be included in or attached [*17] to the department or program cabinet in which they are included or to which they are attached by statute or statutorily authorized executive order, provided, however, in the case of the Personnel Board, and where the attached department or administrative body is headed by a constitutionally elected officer, such attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of such department or administrative body.

(Emphasis added). The phrase "provided, however, . . . such attachment shall be . . ." from the former statute and "except in the case of . . . the attachment shall be . . ." in the current statute read similarly and lead to the same conclusion that the exceptions apply only to the Personnel Board and the offices of constitutionally elected officers.

Our interpretation of these statutes aligns perfectly with Veitch's employment. Veitch obtained his non-merit position when the then-secretary of the Environmental and Public Protection Cabinet performed an administrative task for the KHRC — it formally requested the Governor to appoint Veitch as Chief State Steward. The Governor and the Personnel Cabinet Secretary approved. Because the Cabinet had the statutory authority to make personnel decisions, Veitch was validly employed as Chief State Steward.

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Veitch's argument on appeal, however, is that the Cabinet does not have the statutory authority to make personnel decisions. His argument, then, ignores the necessary conclusion that his appointment was null and void from the beginning. If we were to find that the Public Protection Cabinet has no statutory authority over the KHRC's personnel, then it had no authority to request the Governor's approval to appoint Veitch. Even if we were to agree with Veitch's statutory interpretation, we would have to reverse and remand [*19] the Circuit Court's Order inasmuch as it ordered Veitch's employment be reinstated, as Veitch is not entitled to reinstatement to a position he never validly held.

However, we instead find that the Cabinet has statutory authority to perform administrative functions for the KHRC, which include personnel decisions. Accordingly, the Cabinet's decision to terminate Veitch's appointment was valid. We thus reverse and remand the Franklin Circuit Court's Order inasmuch as it found that the Public Protection Cabinet's appointing authority did not have the power to terminate Veitch's employment as Chief State Steward.

CONCLUSION

Veitch is not entitled to reinstatement to his non-merit position. Veitch was a non-merit employee who could be terminated at any time for no cause. The Public Protection Cabinet, who hired Veitch in the first place, had the authority to terminate Veitch. Accordingly, the Personnel Board's Final Order, which finds the Public Protection Cabinet's appointing authority has the statutory authority to terminate a KHRC employee's non-merit job, is not erroneous. The Franklin Circuit Court's order to the contrary is reversed and remanded with instructions to find Veitch was terminated [*20] by the appropriate appointing authority.

ALL CONCUR.



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OAG 19-012

August 8, 2019

Subject: Whether the Lieutenant Governor has the appointing authority to hire and fire his/her own staff.

Requested by: Lieutenant Governor Jenean M. Hampton

Written by: Taylor Payne, Assistant Attorney General

Syllabus: The Lieutenant Governor is the appointing authority of the office of the Lieutenant Governor and, as such, has the power to appoint and terminate employees of the office of the Lieutenant Governor in accordance with the provisions of KRS Chapter 18A.

Statute construed: KY. CONST. § 70; KY. CONST. § 72; KRS 12.020; 18A.005

Opinion of the Attorney General

Lieutenant Governor Jenean M. Hampton has requested an opinion of this Office to address whether the Lieutenant Governor has "the appointing authority to hire and fire his/her own staff[.]" The Lieutenant Governor informs this Office that in 2015 she hired a chief of staff and a deputy chief of staff. In 2019, Governor Matt Bevin terminated each of their employments in her office. The Lieutenant Governor has attempted to rehire her chief of staff, but the Personnel Cabinet has refused to process her appointment.¹

¹ The Lieutenant Governor has also informed us that both her chief of staff and her deputy chief of staff have appealed the Governor's termination of their employment to the Personnel Board. Given this pending litigation, we decline to opine on the specific terminations at issue.

We advise that the Lieutenant Governor is the appointing authority of the office of the Lieutenant Governor and, as such, has the power to appoint and terminate employees of the office of the Lieutenant Governor in accordance with the provisions of KRS Chapter 18A.

The Lieutenant Governor is a constitutional officer elected for a term of four years. KY. CONST. § 70. The Lieutenant Governor's duties are prescribed by law and may include duties delegated by the Governor. KY. CONST. § 72. The General Assembly has designated the office of Lieutenant Governor as a Department headed by an elected officer within the Cabinet for General Government. KRS 12.020(I)(2). However, KRS 12.020 expressly provides that, "except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body." Thus, as a constitutionally elected officer, the Lieutenant Governor retains "authority over the functions, personnel, funds, equipment, facilities, or records" of her office.

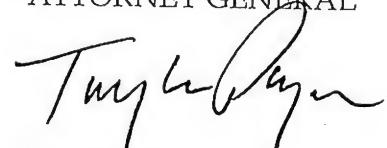
KRS Chapter 18A confirms and further defines this authority of the Lieutenant Governor. Importantly, it defines the "appointing authority" as "the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions." KRS 18A.005(1). Therefore, in accordance with the General Assembly's designation of the office of Lieutenant Governor as a Department headed by the Lieutenant Governor, KRS Chapter 18A recognizes the Lieutenant Governor as the "appointing authority" for the office of Lieutenant Governor. KRS 12.020 instructs that the Lieutenant Governor retains her authority over the personnel of the office of the Lieutenant Governor, including her appointment authority.

Additionally, KRS 18A.115(1)(d) explicitly recognizes the existence of officers and employees on the staff of the Lieutenant Governor. In doing so, it

exempts those officers and employees from the classified service governed by KRS 18A.005 to 18A.200. Notably, 101 KAR 3:050, Section 1(3) states that employees appointed to positions exempted from the classified service "serve at the will of the appointing authority[.]"

In sum, the Lieutenant Governor possesses all of the powers and responsibilities of an "appointing authority" under KRS Chapter 18A with respect to her staff. This includes the appointment of officers and employees to her staff in positions exempt from classified service. Because those officers and employees are exempt from the classified service, they serve at the will of the Lieutenant Governor. The Personnel Cabinet cannot obstruct the Lieutenant Governor from exercising this authority.² Thus, the Lieutenant Governor has the authority to appoint officers and employees to her staff and to terminate the employment of those officers and employers on her staff.

ANDY BESHEAR
ATTORNEY GENERAL



Taylor Payne
Assistant Attorney General

² However, like the other constitutional officers, the Lieutenant Governor is not precluded "from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200." KRS 18A.115(5).